

Legislative Analysis



CLEAN AIR FUND: ELIMINATE TRANSFERS FROM UNCOLLECTIBLES ALLOWANCE RECOVERY FUNDS

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House Bill 4937 (Substitute H-1)

Sponsor: Rep. Aric Nesbitt

Committee: Energy and Technology

(Enrolled as PA 163 of 2013)

First Analysis (9-23-13)

BRIEF SUMMARY: The bill would:

- Eliminate transfers to the Michigan Clean Air Fund from the "uncollectibles allowance recovery funds" established by investor-owned gas and electric utilities. (Cooperative electric utilities currently return the money to their customers.)
- Repeal the statutory requirement that utility companies establish and administer these funds.
- Rescind the administrative rules implementing the transfer of funds to the state.
- Require the money held in the Clean Air Fund be transferred to the Public Service Commission for distribution to utilities in the amounts each utility contributed, and require the utilities to refund those amounts to customers.

FISCAL IMPACT: The bill would require that the accumulated balance of the Michigan Clean Air Fund (\$638,147) be transferred to the Michigan Public Service Commission (MPSC) to be distributed to utility companies in the amounts that they contributed. See *Fiscal Information*, later in the analysis, for a detailed discussion of the fiscal implications of the bill.

THE APPARENT PROBLEM:

The Julian-Stille Value-Added Act (Public Act 322 of 2000, enrolled Senate Bill 1340) created two funds: the Agricultural Development Fund and the Michigan Clean Air Fund. The purpose of the Agricultural Development Fund was to encourage the development of value-added agricultural processing and production in the state. The Michigan Clean Air Fund was created to provide grants and loans to individuals, private or public corporations, and local units of government for programs or projects established to reduce oxides of nitrogen and volatile organic compounds (air pollutants) and for the administration of the grant and loan program.

Under PA 322, the Michigan Public Service Commission requires each natural gas or electric utility under its jurisdiction to establish and administer an uncollectibles allowance recovery fund. Each investor-owned utility must disburse a portion of its fund

annually to the state treasurer for deposit into the Michigan Clean Air Fund. The formula by which a utility is to disburse funds from its uncollectibles allowance recovery fund to the state is found in R 460.2601 through R 460.2625 of the Michigan Administrative Code. A cooperative electric utility must return the money to customers.

Under the act, a utility required to establish and administer an uncollectibles fund must annually deposit into its fund "the difference between the uncollectible provision as recorded in the utility's financial records for 1999 less the provision as recorded on the utility's financial records in each subsequent fiscal year." (The term "uncollectible provision" is not defined in the act but as used here is an accounting term that, generally, describes an amount set aside for a known liability—in this case uncollectibles, or amounts owed by customers but that will not be paid.) This is understood to mean that if uncollectibles in the current year are less than uncollectibles in 1999, that difference is to be deposited into the required uncollectibles fund, and then, for investor-owned utilities, 75% of that amount (under PSC rules) disbursed to the state. If uncollectibles in the current year exceed those of 1999, no deposit is required.

Originally, PA 322 required \$5 million of the revenue deposited into the Michigan Clean Air Fund from the uncollectibles allowance recovery funds to be transferred to the Agricultural Development Fund. However, Public Act 423 of 2006 (enrolled Senate Bill 1168) subsequently eliminated that mandate, thus earmarking all the revenue in the Michigan Clean Air Fund for administration and for grants and/or loans to abate the specified air pollutants.

Apparently, the revenue from the utilities' uncollectibles allowance recovery funds was initially expected to yield about \$5 million each year to the Michigan Clean Air Fund. However, the actual revenue received from the utilities has been only about \$638,147 since PA 322 took effect over a decade ago. In addition, no program has been established by the Department of Environmental Quality to award grants or loans from the Fund. Thus, to date, no funds have been disbursed from the Michigan Clean Air Fund.

Since the original intent of the 2000 act has not been met, or was met by other means, it is suggested that the requirements relating to uncollectibles allowance recovery funds be eliminated and the money in the Michigan Clean Air Fund be returned to customers of the utilities that disbursed money into the Fund.

THE CONTENT OF THE BILL:

House Bill 4937 (H-1) would amend Section 3 of the Julian-Stille Value-Added Act (MCL 285.303) and repeal Section 4. Section 3 creates the Michigan Clean Air Fund for the purpose of providing grants for projects or programs established to reduce oxides of nitrogen and volatile organic compounds (substances which contribute to air pollution) and for related administrative costs. The bill would eliminate as a revenue stream to the Michigan Clean Air Fund monies from the uncollectibles allowance recovery funds established in Section 4 of the act.

As noted, the bill would also repeal Section 4, which contains the requirements that certain gas and electric utilities establish and administer these funds and disburse a

portion of the money in their funds to the state treasurer for deposit into the Michigan Clean Air Fund. Further, the bill would rescind the administrative rules (R 460.2601-460.2625 of the Michigan Administrative Code) that support implementation of Section 4 (MCL 285.304) by the Michigan Public Service Commission.

The H-1 substitute also would transfer the money held in the Clean Air Fund to the Public Service Commission for distribution to each utility in the amount it contributed, and require the utilities to refund those amounts to customers (using an existing reconciliation process in statute).

FISCAL INFORMATION:

House Bill 4937 (H-1) would eliminate the requirement that revenues from each investor-owned utility company's uncollectibles allowance recovery fund be deposited into the Michigan Clean Air Fund, and would repeal Section 4 of Public Act 322, which required the deposits. As of August 2013, the Michigan Clean Air Fund has a balance of \$638,147. The Fund began receiving revenue from the uncollectibles allowance recovery funds in FY 2002 and has not received funding from any other source; no expenditures have been made from the Michigan Clean Air Fund. In FY 2013, the Fund is anticipated to receive approximately \$39,000 in revenues.

The following table provides the annual revenue deposited into the Michigan Clean Air Fund and the Fund's annual fund balance from FY 2002 through August of the current year, FY 2013.

Michigan Clean Air Fund Revenue and Fund Balance History		
Fiscal Year	Revenue	Fund Balance
2002	\$61,744	\$61,744
2003	0	61,744
2004	16,981	78,724
2005	0	78,724
2006	43,303	122,027
2007	108,251	230,278
2008	113,997	344,275
2009	127,259	471,534
2010	3,317	474,851
2011	124,081	598,932
2012	0	598,932
2013 (as of 8/22/13)	\$39,215	\$638,147

HFA Agency

Data Source: Department of Environmental Quality

By repealing Section 4 of PA 322 of 2000, the bill would end current deposits into the Michigan Clean Air Fund from utilities. The bill would also require that the accumulated balance of the Michigan Clean Air Fund be transferred to the Michigan Public Service Commission (MPSC) to be distributed to utility companies in the amounts that they contributed. The utilities must then refund these amounts to their customers. Under the provisions of House Bill 4937 (H-1), the current balance of the Michigan Clean Air Fund would be transferred to the MPSC and the DEQ would no longer have the \$638,147 fund balance or any future revenues from uncollectibles allowance recovery funds that might have been credited to the Fund to use to provide grants and loans under this program. As of September 2013, the DEQ has not yet created a grant and loan program to be funded by the Michigan Clean Air Fund.

House Bill 4937 could have a nominal fiscal impact on the Michigan Public Service Commission (PSC) to the extent that the PSC would no longer be responsible for statutory oversight of the Uncollectibles Allowance Recovery Fund or the resolution of disputes regarding the Fund.

ARGUMENTS:

For:

When Public Act 322 was enacted in 2000, it was envisioned that the requirement for certain utilities to forward a portion of their uncollectibles recovery allowance funds for disbursement into the Michigan Clean Air Fund would provide at least \$5 million a year for a grant and/or loan program to make the air cleaner in Michigan by mitigating reducing emissions of certain air pollutants. At least \$5 million was also earmarked for agricultural processing and production initiatives.

Thirteen years later, the total revenue generated has not even reached \$1 million. The statutory requirement for \$5 million earmarked for agricultural processing was repealed seven years ago. And to date, the state agency charged with establishing a grant and/or loan program for air pollution measures has neither developed that program nor disbursed any of the funds. Moreover, the original goal of reducing air pollution has been accomplished to a great extent by tighter federal clean air rules that have greatly lowered emissions of the substances targeted in the original legislation. Thus, there seems little need to continue enforcing what has now become a paperwork burden for utilities and the state regulatory agency which must review the related reports.

The bill addresses these issues by repealing the statutory mandate that gas and electric utilities maintain uncollectibles allowance recovery funds and for investor-owned utilities to forward any required revenue to the state for deposit into the Michigan Clean Air Fund. Thus, though the Fund would still exist in statute, the bill would end the funding stream from the utilities' uncollectibles allowance recovery funds. The bill would also rescind administrative rules promulgated to implement the collection of the revenue from the utilities.

Further, the bill would require the Michigan Public Service Commission, which regulates gas and electric utilities, to return the money currently in the fund to those utilities from which the collections since 2000 have been made. Those utilities would then have to,

through the rate process system, refund the monies to the rate payers (meaning, the current electric or gas customers). Proponents of the legislation say that is the only fair solution – to return the funds to those who paid them in the first place.

Response:

It has been suggested that the funds currently in the Michigan Clean Air Fund could be used instead to shore up the School Aid Fund. The revenue could also be used to fund any of the many educational, health, or social welfare programs, including programs to provide heating assistance to low income persons, administered by state agencies. Such an approach would result in a greater overall benefit than to refund very small amounts to utility customers. Plus, some of the money to be returned was collected years ago. Many of those customers who paid into the Fund may be deceased, live out of state, or no longer be a customer of the utility. Thus, though some consumers will get a small credit on their utility bills, it will not necessarily be the ones who actually paid in the first place.

POSITIONS:

A representative of the Office of the Governor testified in support of the bill. (9-3-13)

The Department of Environmental Quality indicated support for the bill. (9-3-13)

A representative of SEMCO Energy testified in support of the bill. (9-3-13)

Michigan Electric and Gas Association indicated support for the bill. (9-3-13)

DTE Energy indicated support for the bill. (9-3-13)

Integrus Energy Group indicated support for the bill. (9-3-13)

Michigan Electric Cooperative Association indicated support for the bill. (9-3-13).

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.